

Letter of Findings Number: 05-0540
Sales Tax for 2002, 2003, and 2004

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ISSUES

I. Sales Tax – Collection of Sales Tax and Tax-Exempt Transactions

Authority: IC § 6-8.1-5-1(b); [IC 6-2.5-2-1](#); [IC 6-2.5-6-1](#); [IC 6-2.5-9-3](#); [IC 6-2.5-4-4](#); [IC 6-2.5-8-8](#); [IC 6-2.5-5-16](#); [IC 6-2.5-5-24](#)(a); Form ST-105; Form ST-136A; Form IT-35SE.

The taxpayer protests the imposition and assessment of sales tax on retail transactions it asserts were made by tax-exempt customers.

STATEMENT OF FACTS

Taxpayer is a provider of motel accommodations. The Department conducted an audit of Taxpayer. During the audit period, Taxpayer made sales it asserts were exempt from the collection of sales tax from the guest. No supporting documentation was made available to the auditor; the Department requested Taxpayer furnish the sales invoices and exemption certificates for the purportedly exempt sales. Taxpayer submitted a box of documents to the auditor, but the Department determined that the documents did not substantiate exemption from the collection of sales tax. Taxpayer protested. A hearing was scheduled, but Taxpayer did not participate. The findings are based on the information in the file and the documents submitted to the Department.

I. Sales Tax – Collection of Sales Tax and Tax-Exempt Transactions

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. [IC 6-8.1-5-1](#)(b).

[IC 6-2.5-2-1](#)(a) imposes an excise tax, known as the state gross retail tax, on retail transactions made in Indiana. This tax is referred to commonly as "sales tax." [IC 6-2.5-2-1](#)(b) states that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided by law, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant is required to collect the tax as agent for the state. [IC 6-2.5-2-1](#)(b). [IC 6-2.5-6-1](#) states the method and timetable by which a retail merchant is obligated to remit the collected sales tax to the State of Indiana through the Department of Revenue. [IC 6-2.5-9-3](#) states that a retail merchant has a duty to remit Indiana gross retail tax to the Department, holds those taxes in trust for the State, and is personally liable for the payment of those taxes to the State.

Taxpayer is a registered retail merchant with the State of Indiana and holds a retail merchant's certificate. [IC 6-2.5-4-4](#) states that renting or furnishing rooms, lodgings, or other accommodations for periods of less than 30 days is subject to sales tax; *hotel*, *motel*, and *inn* are specifically named within [IC 6-2.5-4-4](#) as places where rooms, lodging, and accommodations are subject to sales tax. The rental of rooms by Taxpayer to guests for less than 30 days is subject to sales tax, imposed on the guest—as purchaser of accommodations—to be paid to Taxpayer.

The tax statutes have provisions exempting specific transactions and/or specific purchasers from taxation. [IC 6-2.5-8-8](#) states that qualified persons and organizations may present a retail merchant with an exemption certificate instead of paying the sales tax. A retail merchant who receives a "proper exemption certificate" has no duty to collect or remit sales tax on that transaction. *Id.* The person seeking the exemption is to use the forms prescribed by the Department in the manner prescribed by the Department. The possible combination of qualified exempt taxpayers and qualified exemption forms is beyond the purpose and scope of this letter of findings. A brief discussion is outlined below to address Taxpayer's situation.

When the Department reviews the box of documents, it should be able to match the transaction to a valid sales tax exemption certificate from that purchaser. Taxpayer did not appear at the hearing to facilitate the explanation or matching of documents; the Department therefore has exercised its best judgment in good faith in an attempt to interpret and match the documents on Taxpayer's behalf despite the statutory presumption and burden of proof of [IC 6-8.1-5-1](#)(b).

Taxpayer asserts that it made sales to exempt purchasers who presented exemption certificates. Within the box of documents given to the Department by Taxpayer to substantiate its case are a monthly listing of daily exempt transactions, copies of the transaction invoices for 30-day guests, and copies of exemption certificates. The Department has issued a variety of prescribed forms (certificates) that can be presented to a retail merchant by qualified exempt purchasers. For the years at issue, some of the qualified forms include ST-105, "**General Sales Tax Exemption Certificate**," and ST-136A, "**Out-of-State Purchaser's Exemption Affidavit**." The Department also issues Form IT-35SE, "**Not-for-Profit Tax Registration Certificate**." Form IT-35SE and other

similar *not-for-profit registration* certificates are not prescribed forms that may be presented to a retail merchant on a transaction to document exemption from sales tax. Only a *sales tax exemption* certificate documents to a retail merchant that the transaction by the purchaser is exempt from the sales tax and relieves the retail merchant from the statutory obligation to collect sales tax from the purchaser. Taxpayer has submitted sales tax exemption certificates issued from other states. Those certificates are valid for transactions in the issuing states. However, an out-of-state sales tax exemption certificate can be presented in Indiana and will permit out-of-state exempt purchasers to be exempt from Indiana sales tax on qualifying purchases. But to use an out-of-state sales tax exemption certificate in Indiana, the exempt purchasers would need to complete and present to the retail merchant Form ST-136A, "**Out-of-State Purchaser's Exemption Affidavit.**" The out-of-state exemption certificate combined with a completed ST-136A is the necessary documentation to have been received by Taxpayer.

Taxpayer has not substantiated the purportedly exempt purchases. Taxpayer has submitted to the Department a monthly list of the daily transactions and a set of Form ST-105 certificates, Indiana exempt registration certificates, out-of-state sales tax exemption certificates, and out-of-state exempt registration certificates. The Form ST-105 certificates may have documented that Taxpayer was not required to collect and remit sales tax on those transactions; however, the certificates alone without a copy of the invoice do not substantiate an exempt transaction. Merely listing the holder of the certificate and a transaction amount does not support the actual transaction. The Department needed to see that the organization who was billed and paid the invoice is matched with the exemption certificate. Some of the exemption certificates have an individual's name hand-written on them. The Department's concern is that the individuals who were billed and paid for the transaction were using an organization's exemption certificate. It is understandable that an individual may be representing an exempt organization. But that organization needed to have been billed and paid Taxpayer for the transaction. An agent of an organization who is billed and pays that bill personally is not entitled to use the exemption certificate. The organization needs to be the one invoiced and the one who paid the bill in order to qualify for exempt status. Taxpayer has not provided invoices that correspond to the exemption certificates.

Taxpayer also has submitted as documentation Form IT-35SE, "**Not-for-Profit Tax Registration Certificate**," and other registration certificates from Indiana and other states. These are not "proper exemption certificates." Indiana sales tax exemption certificates needed to have been presented to substantiate the transaction.

Taxpayer has submitted out-of-state sales tax exemptions certificates that are not accompanied by a Form ST-136A, "**Out-of-State Purchaser's Exemption Affidavit.**" Out-of-state sales tax exemption certificates are not honored and valid in Indiana without an attached Indiana out-of-state affidavit certificate. Taxpayer is a motel. Significant business is garnered from out-of-state guests. Therefore, Taxpayer is expected to have followed the procedure stipulated by Indiana law.

[IC 6-2.5-5-16](#) states that transactions are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service: (1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state; and (2) predominantly uses the property, commodities, or service to perform its governmental functions. [IC 6-2.5-5-24\(a\)](#) states that transactions with the United States government are exempt from sales tax to the extent the state is prohibited by the Constitution of the United States from taxing that gross income. The effect of both these provisions is that federal government, Indiana state government, and Indiana local government employees are exempt from sales tax when the individual is acting in their official capacity when renting the room; but the individual will need to provide documentation that they are a government agent acting within their official capacity when renting the room from Taxpayer. Taxpayer has provided documentation that some of their guests were not taxed because they were government employees acting within their official capacity when they rented the rooms. The Department finds some of these documents meet the burden for substantiating exemption from the imposition and collection of sales tax under the statutes. Other documents do not adequately substantiate exemption from the imposition and collection of sales tax. Having reviewed the documents in aggregate, the Department will remove from the assessment the particular and individual transactions substantiated by documents evidencing government employees acting within their official capacity when they rented rooms from Taxpayer. However, transactions supported by documents that do meet the burden of substantiating government employees acting within their official capacity will not be removed from the assessment. Also, of note, Taxpayer rented rooms to out-of-state state and local government employees. Indiana has no statutory provision exempting these transactions from the imposition and collection of sales tax. These transactions will not be removed from the assessment. However, those out-of-state transactions supported by an Indiana Out-of-State Purchaser's Exemption Affidavit, as discussed above, are eligible for removal from the assessment.

An exempt purchaser and a retail merchant have a shared responsibility in sales tax exempt transactions. The retail merchant is required to charge and collect sales tax; the exempt purchaser must demonstrate to the retail merchant that it qualifies not to have sales tax imposed. Taxpayer is required by [IC 6-2.5-2-1](#) and [IC 6-2.5-4-4](#) to have collected and remitted sales tax. Exempt purchasers are required by [IC 6-2.5-8-8](#) to provide a retail merchant with a "proper exemption certificate" prescribed by the Department. Taxpayer has not substantiated that

it received a "proper exemption certificate" prescribed by the Department for many transactions. For this reason, the assessments on those transactions that do not correspond a proper exemption certificate to the actual exempt purchaser are upheld; Taxpayer's protest of these assessments is denied. On those assessments in which a "proper exemption certificate" can be matched to the actual exempt purchaser, Taxpayer's protest is sustained. Those assessment are to removed by the Department.

Taxpayer has documented guests identified as 30-day guests. After reviewing the documentation, the Department is satisfied that transactions occurred in which sales tax did not need to be charged and collected. Taxpayer's protest is sustained on those 30-day transactions it has substantiated with an invoice documenting the guest was a 30-day guest who paid and stayed for at least 30 days.

FINDING

Taxpayer's protest is sustained in part and denied in part as outlined above. Taxpayer is sustained on the 30-day guests who meet the 30-day billing cycle and those transactions in which a "proper exemption certificate" prescribed by the Department is matched with the actual exempt purchaser. Taxpayer is denied on those transactions in which a "proper exemption certificate" prescribed by the Department cannot be matched to the exempt purchaser.

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